

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RONALD G. BEAGLES,

Petitioner,

v.

MAGGIE MILLER-STOUT,

Respondent.

CASE NO. C02-203-MJP

ORDER

This petition for habeas corpus pursuant to 28 U.S.C. § 2254 is before this Court upon remand from the United States Court of Appeals for the Ninth Circuit (hereinafter “Ninth Circuit”). On September 17, 2002, this Court dismissed petitioner’s § 2254 petition for failure to exhaust fourteen of the fifteen claims. Dkt. # 20. On April 28, 2005, the Ninth Circuit vacated this Court’s decision dismiss and remanded. Dkt. # 27. The Court, having reviewed the petition and the balance of the record, does hereby find and ORDER:

(1) Where a district court determines that the § 2254 petition is a mixed petition, petitioner must be offered the opportunity to amend his petition to delete the unexhausted claims and proceed on the exhausted claims, or alternatively to stay the petition after the dismissal of unexhausted claims, in order to permit petitioner to exhaust

1 those claims and to add them by amendment to his stayed federal petition. *See Kelly v.*
2 *Small*, 315 F.3d 1063, 1069-70 (9th Cir. 2003).

3 (2) Accordingly, because the district court had concluded that the petition was
4 a mixed petition, *see* Dkt. # 20, petitioner within **thirty (30) days** must amend his petition
5 to delete the unexhausted claims and inform the Court whether he wishes to proceed with
6 his one unexhausted claim or to stay the petition after the dismissal of the unexhausted
7 claims, to allow for exhaustion, and to later add them by amendment to the stayed federal
8 petition. **If no amended petition is timely filed, the Court will recommend that the action**
9 **be dismissed.**

10 (3) The Clerk is directed to send a copy of the Court's § 2254 petition form to
11 Petitioner to fill out. Petitioner shall use the Court's form to amend his petition. Petitioner is
12 further advised that his amended petition will replace, and not merely supplement, his original
13 petition.

14 (4) The Clerk is also directed to send a copy of this Order to Petitioner.

15 DATED this 6th day of October, 2005.

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20 MONICA S. BENTON
21 U.S. Magistrate Judge
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